

REPUBLIC OF KENYA
IN THE ENVIRONMENT AND LAND COURT AT
KITALE
ELC NO. 55 OF 2009

DANIEL KIPKEMBOI
BETT-----1ST PLAINTIFF
DAVID KIBITOK KEMBOI-----
2ND PLAINTIFF
JULIUS
KIMELI-----3RD
PLAINTIFF
JOSEPH RONO-----
4TH PLAINTIFF
KIPKEMBOI KOGO-----
5TH PLAINTIFF
KIPTOO BARNGETUNY-----
6TH PLAINTIFF
BENARD KITARIA-----
7TH PLAINTIFF
TAMARTA CHEBICHII-----
8TH PLAINTIFF

VERSUS

MARGARET WANJIKU CHEGE-----
DEFENDANT

AND

JOSEL KIMUTAI BOSEK
T/A BOSEK & CO.
ADVOCATES-----APPLICANT

RULING

- 1.** The court, by an application dated **1/9/2025**, is asked by the former law firm for the plaintiffs herein, to issue injunction, or inhibition orders, or, in the alternative, to order that portion of **L.R. No. 1800/3**, sufficient to satisfy its legal costs, interests, as would be taxed be preserved and upon determination of the Bill of Costs to be sold under the court's supervision and the proceeds be used to settle the said bill.
- 2.** The grounds are set out on its face and in a supporting affidavit of Joel Kimutai Bosek, sworn on **10/9/2025**. The applicant deposes that he has successfully represented the plaintiff since **2009** up to the Court of Appeal, and that the plaintiffs, who are in the process of executing the decree they have refused, failed, or neglected to settle the legal fees.
- 3.** The applicant attaches the copies of the judgment at the Court of Appeal as **PKB-(1)** and the bill of costs as **PKB-(2)**. The applicant deposes that the plaintiffs are likely to dispose of the only identifiable asset available to satisfy the taxed cost, hence there is a need to offer security pending taxation, otherwise the intended certificate of cost may be frustrated or defeated.

4. The application is opposed through a replying affidavit of Joseph Rono, sworn on **2/10/2025**, admitting that the applicant is his son-in-law, who has acted in **Kitale HCC No. 35/1997, Kitale ELC No. 55/2009, Kisumu COA No. 116/2015, Kitale HCC No. 76/2004, Eldoret HCCA No. 81/2010, and Nairobi COA No. 83/2010**, for individual members of Kaptien Farm with respect to **132.5 acres** of the Farm without charging legal fees except in **Kitale HCC No. 35/1997**.
5. The respondent deposes that it could be extremely difficult to decide on how much the applicant should be paid as legal fees until taxation is done. The respondent admits that there was a general consensus among members that the legal costs be paid by the members upon successful litigation, since they could not raise the fees.
6. The respondents admit that in the course of the trials, the applicant brought on board senior lawyers such as the late Steve Odero and Senior Counsel Kioko Kilukumi, to assist him, whom he paid on their behalf. The deponent says that he is conflicted and therefore the bill should be taxed first, before the land is subdivided and given to individual members.

7. Based on this application, the applicants have brought before the court for adoption a consent dated **8/10/2025**. It is on record that on **25/9/2025**, the applicant's law firm was replaced by the firm of Sonoya & Co. Advocates, under **Order 9 Rule 9** of the Civil Procedure Rules, following leave sought by an application dated **18/8/2025**.
8. In **Kenya Airports Authority -vs- Otieno Ragot and Company Advocates (Petition E011 of 2023) [2024] KESC 44 (KLR) (2 August 2024) (Judgment)**, the court said that **Section 36** of the Advocates Act and **Rule 3** of the Advocates Remuneration Order, sets out standard to regulate the profession and tasks the rule of assessing or taxing fees under **Rule 10** of the Taxing Master, including instructions fees, based on the subject matter of the suit, as per the pleadings, judgment or settlement of the parties.
9. Where there is no agreement on how much to pay, the court, the taxing officer has the power to determine. As to security, **Order 52 Rule 4(3)** of the Civil Procedure Rules allows an advocate to seek such orders.

10. In **Republic -vs- Lucas Maitha Chair Betting Control & Licensing Board, [2017] eKLR**, Odunga J, as he then was, said that the instructing client has a legal obligation to pay his lawyer and the lawyer has a lien over money in his possession, belong to the client, including papers, or property of the client, until all costs and charges due to the advocate are paid. See **Booth Extrusions (Formerly) Booth Manufacturing Africa Limited -vs- Dumbeya Nelson Muturi Harun t/a Nelson Harun & Company Advocates [2014]**
11. In **Simon Njumwa Maghanga -vs- Joyce Kagongo [2013] eKLR**, the court said that advocates' costs became due after taxation by the court. Security for costs before taxation is what the parties seek to agree on.
12. The consideration to guide the court on security for costs generally was discussed in **Westmont Holdings SDN BHD -vs- Central Bank of Kenya & 2 others (Petition 16 (E023) of 2021) [2023] KESC 11 (KLR) (17 February 2023) (Judgment)**.
13. It is defined as security for costs as money, property, or a bond deposited in court by a party to

secure the payment of litigation costs while the case is ongoing and to protect the party sued if eventually the suing party loses.

14. Such as an order is granted based on:

(a) Prospect of success or merits of the proceedings.

(b) Genuineness of the proceeds.

(c) Impecuniosity of the plaintiff.

(d) Whether there has been an admission of or payment in court.

(e) If the security sought is proportionate to the importance and complexity of the subject matter in dispute.

(f) Ease and convenience or otherwise of enforcing the right.

(g) Timing of the application.

15. Applying the foregoing case law, the retainer of the applicant by the respondent is not disputed. The indebtedness of the applicant by the respondent is equally admitted. How much is due to the applicant is what the parties want the taxation of the bill of costs to establish.

16. The respondent does not oppose the bill of costs being taxed before the execution of the decree can be done. **Article 159** of the Constitution grants the court powers to encourage and facilitate Alternative Dispute Resolution.

17. I find the consent dated **11/11/2025** as proposed legal. It is hereby adopted as an order of this court.

18. Orders accordingly.

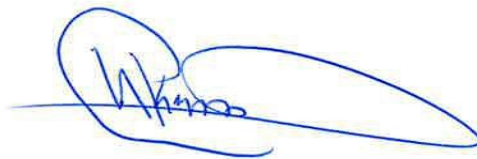
Ruling dated, signed, and delivered via **Microsoft Teams/Open Court** at **Kitale** on this **10th** day of **December 2025**.

In the presence of:

Court Assistant - Dennis

Jepkorir for Bosek for the applicant - present

Cherugut for the respondent- present



**HON. C.K. NZILI
JUDGE, ELC KITALE.**